

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PRESIDION SOLUTIONS, INC.,

Plaintiff,

-against-

05 Civ. 7905 (GEL)

BRENTWOOD CAPITAL CORPORATION,
CHARLES J. SPINELLI, and
O. RAY McCARTHA,

Defendants.

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DECLARATION OF KURT E. THALWITZER

KURT E. THALWITZER states as follows pursuant to 28 U.S.C. § 1746:

1. My name is Kurt E. Thalwitzer. I am fifty-four (54) years of age and am of sound mind, and am competent to make this declaration. This declaration is based upon my personal knowledge.

2. I was admitted to the Florida Bar in 1990 and am a member in good standing today. I have been a resident of Orlando, Florida since that year.

3. Since my admission to the Florida Bar, I have been employed at the law firm of Mateer & Harbert, P.A., located in Orlando, Florida. Since March of this year, I have been representing Plaintiff Presidion Solutions, Inc. ("Presidion"), and have been handling numerous matters for it.

4. During the morning of July 9, 2007, I learned from Aaron Bates, another attorney in Florida representing Presidion, that the Court in this action had entered an order on June 15, 2007 which required Presidion to retain new counsel. I was instructed to promptly locate an attorney to represent Presidion.

5. Immediately that same day, I researched and identified an attorney located in New

York, New York, Roger J. Bernstein, Esq. who might be able to handle this matter. Early that afternoon, I advised Mr. Bates that Mr. Bernstein appeared qualified to represent Presidion in this action. Mr. Bates and I personally spoke to and interviewed Mr. Bernstein on July 10, 2007.

6. Since July 10, 2007, there have been multiple written and oral communications with Mr. Bernstein so he would be well apprised of the facts and circumstances in order to properly represent Presidion in this action. In addition, Mr. Bernstein has obtained some information concerning defendant Spinelli.

7. Given the numerous activities of Presidion during the month of June and July 2007 of which I am aware (including the termination of its general counsel and the end-of-month relocation of its principal office), and considering the efforts expended by Mr. Bates since learning of the default entered against Presidion, Presidion acted expeditiously and reasonably under the circumstances. The circumstances that led to the non-appearance on July 6, 2007, including the apparent conflict of interest of its general counsel, are detailed in the other affidavits submitted on the corporation's behalf. On its behalf, I respectfully request that the Court excuse the non-appearance of counsel on July 6, 2007 and permit this very meritorious action to go forward, so that the corporation is not left without a remedy. Alternatively, on Presidion's behalf I respectfully request that the Court modify its July 6, 2007 order so that it is without prejudice rather than with prejudice.

Pursuant to 28 U.S.C., Section 1746, I declare under penalty of perjury that the foregoing facts set forth in this Declaration are true and correct to the best of my knowledge.

FURTHER AFFIANT SAITH NOT.


KURT E. THALWITZER